

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**WILLIAM E. HOLDNER**, *an individual* )  
*dba* **HOLDNER FARMS**, )

Plaintiff, )

v. )

**JOHN KROGER**, Attorney General of )  
Oregon, et al., )

Defendants. )  
\_\_\_\_\_ )

No. **3:12-cv-1159-PK**

**OPINION AND ORDER ADOPTING  
FINDINGS AND RECOMMENDATION**

**SIMON, District Judge.**

Magistrate Judge Paul Papak issued findings and recommendation in the above-captioned case on November 6, 2012. Dkt. 47. Judge Papak recommended that Defendants' Motion to Dismiss, Dkt. 21, be GRANTED. Plaintiff timely filed objections. Dkt. 49. Defendant has responded to those objections. Dkt. 50.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the

court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

The Court has reviewed *de novo* those portions of Judge Papak’s findings and recommendation to which Plaintiff has objected, as well as Plaintiff’s objections and Defendants’ response. The Court agrees with Judge Papak’s reasoning regarding *Younger* abstention and claim preclusion and adopts those portions of the findings and recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe a standard of review. Indeed, where there are no objections, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Furthermore, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

For those portions of Judge Papak’s findings and recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

Therefore the Court orders that Judge Papak's findings and recommendation, Dkt. 47, are ADOPTED. Defendants' Motion to Dismiss, Dkt. 21, is GRANTED. All other pending motions are DENIED AS MOOT. Judgment will be entered for Defendants.

Dated this 10th day of December, 2012.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge